

REMARKS

I. General

Claims 1-4, 6-34, 36-47 and 62-63 are pending in this application.

- Claims 1 and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication 2002/0077113 A1 to Spaling et al. (hereinafter “Spaling”) in view of U.S. Patent Publication 2002/0001337 A1 to Chauncey et al. (hereinafter “Chauncey”).
- Claims 6, 9-10, 14, 33-34, 36-37, and 42 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of U.S. Patent No. 6,970,441 to Pirhonen et al. (hereinafter “Pirhonen”).
- Claims 11-12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of Pirhonen in further view of U.S. Patent Publication No. 2003/0008683 to Nanao et al. (hereinafter “Nanao”).
- Claim 2 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of U.S. Patent Publication No. 2004/0203714 to Van Lieshout et al. (hereinafter “Van Lieshout”).
- Claim 38 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of Pirhonen in further view of Van Lieshout.
- Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of U.S. Patent Publication 2002/0196749 A1 to Eyuboglu et al. (hereinafter “Eyuboglu”).
- Claim 39 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of Pirhonen in further view of Eyuboglu.

- Claims 4 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of U.S. Patent Publication 2002/0174441 A1 to Marin et al. (hereinafter “Marin”).
- Claims 40 and 47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of Pirhonen in further view of Marin.
- Claims 28-32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey.
- Claims 7, 8, 13, 62, and 63 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of Pirhonen in further view of U.S. Patent 6,275,990 B1 to Dapper et al. (hereinafter “Dapper”).
- Claims 15-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of U.S. Patent Publication 2002/0126704 A1 to Cam et al. (hereinafter “Cam”).
- Claim 21 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling Chauncey in further view of Cam and further in view of U.S. Patent Publication 2003/0043738 A1 to Barsheshet (hereinafter “Barsheshet”).
- Claims 23-27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of U.S. Patent Publication 2003/0161386 A1 to Schilling (hereinafter “Schilling”).
- Claims 43-45 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of Pirhonen in further view of Schilling.
- Claim 41 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of Pirhonen in further view of Barsheshet.

- Claim 46 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of Pirhonen in further view of Schilling and further in view of Barsheshet.

Applicant hereby traverses the rejections of record and requests reconsideration and withdrawal of such in view of the remarks contained herein.

II. Interview Summary

On March 28, 2007 Applicant and the Examiner discussed the rejections of record. Those present during the interview were the Examiner and Applicant's attorney, Robert Greeson. Applicant and the Examiner discussed whether or not "a first subscriber subsystem disposed at a subscriber location" and "a second subscriber subsystem disposed at a subscriber location," as recited in the claims was supported by the original specification. After some discussion, the Examiner acknowledged that these limitations were supported by the original specification. Also, the Examiner acknowledged that the limitations did not appear to be present in the art of record.

III. Background

In the Current Action, the Examiner opines "[t]he Applicant's original specification and claims do not ever disclose limiting the first and second subsystems to being subscriber subsystems located at a subscriber location." *See* Current Action, pg. 24. The Examiner further states "[i]t is recommended that the current claim language be amended such that it does not add limitation not supported by the original specification." *Id.* As Applicant best understands, the Examiner did not consider Applicant's arguments that the Examiner's proposed combination fails to teach or suggest a first and second subscriber system disposed at a subscriber location. In response to the Examiner's comments mentioned above, Applicant called the Examiner to discuss these matters. On March 28, 2007 Applicant and the Examiner discussed whether or not the claim limitations were supported by the original specification. The Examiner acknowledged that Applicant's specification supported each claim limitation. Indeed, support for the limitations at issue can be found in the original specification at, for example, paragraphs [0019],

[0026], and [0032]. Further, as Applicant best understood from the discussion, the Examiner agrees that neither Chauncey or Spaling teach or suggest “a first subscriber system disposed at a subscriber location” or “a second subscriber subsystem disposed at said second subscriber location,” as set forth in the claims. Nevertheless, the Examiner requested that Applicant draft a formal response to address these matters and advance prosecution of the pending claims. As such, Applicant addresses the rejections of record and, for the sake of clarity, again points out that the combination of Chauncey and Spaling fails to teach or suggest every claim limitation.

III. Rejections Under 35 U.S.C. § 103

In making a determination of obviousness under 35 U.S.C. 103, one should consider the factual inquiries as set forth in *Graham v. John Deere Co.* These factual inquiries are:

- (A) Determining the scope and contents of the prior art;
- (B) Ascertaining the differences between the prior art and the claims at issue;
- (C) Resolving the level of ordinary skill in the pertinent art; and
- (D) Evaluating evidence of secondary considerations.

- A. Claims 1 and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey.

Claim 1 recites “a first subscriber subsystem disposed at a subscriber location” and “a second subscriber subsystem disposed at said subscriber location.” In the Current Action the Examiner points to Spaling’s Radio Network Controller (RNC) as satisfying the recited first subscriber subsystem and Spaling’s base station as satisfying the second subscriber subsystem. *See* Current Action, pgs. 2-3. Applicant notes, however, that each of Spaling’s RNC and base station are on the network side of a wireless communications system. *See, for example* Spaling at Figs. 1 & 5. As such, neither of Spaling’s RNC or base station can appropriately be equated with a subscriber subsystem. In fact, the only feature disclosed in Spaling that could be appropriately construed as a “subscriber subsystem” is a mobile station. Further, if Spaling’s RNC and base station are modified to be part of a subscriber unit (e.g., part of the mobile station subsystem), there wouldn’t be a need to effectuate communication between the mobile station, base station, and RNC. Instead, a mobile station user would simply communicate directly with another network on the “backside” of the RNC (shown as “other networks” in Fig. 1). Moving

Spaling's base station and RNC to a subscriber location would destroy the very purpose for having each in the first place. Considering the differences between Spaling's system and the pending claims, it does not make sense to construe Spaling's RNC or base station as the claimed subscriber subsystem. Moreover, Chauncey is not relied upon to satisfy this missing limitation, nor does it do so. Therefore, Applicant requests withdrawal of the rejection of record.

Claim 1 also recites "...wherein said first subscriber subsystem comprises an indoor unit subsystem and said second subscriber subsystem comprises an outdoor unit subsystem." In the Current Action the Examiner relies upon Chauncey to satisfy this limitation. *See* Current Action, pg. 5. However, Chauncey's indoor unit and outdoor unit communicate via a modulated RF signal carried on a coaxial cable. Therefore, modifying Spaling as the Examiner suggests would require an analog link between a first and second subsystem. Of course, this proposed combination would not satisfy a first subscriber subsystem having a first digital interface or second subscriber subsystem having a second digital interface, as set forth in the claim. Therefore, Applicant requests withdrawal of the rejection of record.

Claim 22 depends from claim 1 and inherits every limitation therefrom. As shown above, the combination of Spaling and Chauncey does not teach or suggest every limitation of claim 1. As such, claim 22 is patentable at least through its dependency on claim 1.

- B. Claims 6, 9-10, 14, 33-34, 36-37, and 42 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of Pirhonen.

Claim 33 recites "said first subscriber subsystem disposed at a subscriber location" and "a second subscriber subsystem disposed at said subscriber location." In the Current Action the Examiner points to Spaling's Radio Network Controller (RNC) as satisfying the recited first subscriber subsystem and Spaling's base station as satisfying the second subscriber subsystem. *See* Current Action, pgs. 6-7. Applicant notes, however, that each of Spaling's RNC and base station are on the network side of a wireless communications system. *See, for example* Spaling at Figs. 1 & 5. As such, neither of Spaling's RNC or base station can appropriately be equated with a subscriber subsystem. In fact, the only feature disclosed in Spaling that could appropriately be construed as a "subscriber subsystem" is a mobile station. Further, if Spaling's

RNC and base station are modified to be part of a subscriber unit (e.g., part of the mobile station subsystem), there would not be a need to effectuate communication between the mobile station, base station, and RNC. Instead, a mobile station user would simply communicate directly with another network on the “backside” of the RNC (shown as “other networks” in Fig. 1).

Considering the differences between Spaling’s system and the pending claims, it does not make sense to construe Spaling’s RNC or base station as the claimed subscriber subsystem. Moreover, Chauncey is not relied upon to satisfy this missing limitation, nor does it do so. Therefore, Applicant requests withdrawal of the rejection of record.

Claim 33 also recites “wherein said first signal processing subscriber subsystem comprises an indoor unit and said second signal processing subscriber subsystem comprises an outdoor unit.” In the Current Action the Examiner relies upon Chauncey to satisfy this limitation. *See* Current Action, pg. 5. However, Chauncey’s indoor unit and outdoor unit communicate via a modulated RF signal carried on a coaxial cable. Therefore, modifying Spaling as the Examiner suggests would require an analog link between a first and second subsystem. Of course, this proposed combination would not satisfy a first subscriber subsystem having a first digital interface or second subscriber subsystem having a second digital interface, as set forth in the claim. Therefore, Applicant requests withdrawal of the rejection of record.

Claim 33 further recites “a first signal processing subscriber subsystem providing only digital signal processing...said first subscriber subsystem disposed at a subscriber location” and “a second signal processing subscriber subsystem providing analog and digital signal processing...said second subscriber subsystem disposed at said subscriber location.” In the Current Action, the Examiner point to Pirhonen’s base station, BTS 200, as satisfying “a second signal processing subscriber subsystem providing analog and digital signal processing” and points to Pirhonen’s base station controller, BSC 214, as satisfying “a first signal processing subscriber subsystem providing only digital signal processing.” *See* Current Action, pg. 8. However, Applicant point out that neither of Pirhonen’s BTS 200 or BSC 214 satisfy the claim limitation. That is, each of Pirhonen’s and BTS 200 and BSC 214 are on the network side of a GSM cellular radio system. *See* Pirhonen at, for example, Fig. 2. As such, neither of Pirhonen’s base station (BTS 200) or base station controller (BSC 214) can appropriately be equated with a

subscriber subsystem. In fact, the only feature disclosed in Pirhonen that could be appropriately construed as a “subscriber subsystem” is a mobile station. Further, if Pirhonen’s BTS 200 and BSC 214 are modified to be part of a subscriber unit (e.g., part of the mobile station subsystem), there wouldn’t be a need to effectuate communication between a mobile station, base station, and base station controller. Instead, a mobile station user would simply communicate directly with another network on the “backside” of the base station controller, i.e., “other parts of the network.” *See* Pirhonen at col. 3 lines 21-23. Considering the differences between Pirhonen’s system and the pending claims, it does not make sense to construe base station (BTS 200) or base station controller (BSC 214) as a claimed subscriber subsystem. Moreover, Spaling and Chauncey is do not satisfy this missing limitation. Therefore, Applicant requests withdrawal of the rejection of record.

Claims 6, 9-10, and 14 depend from claim 1 and claims 34, 36-37, and 42 depend from claim 33, respectively. Each dependent claim inherits every limitation of the claim from which it depends. As shown above, the combination of Spaling and Chauncey does not teach or suggest every limitation of claims 1 and 33. As such, claims 6, 9-10, 14, 34, 36-37, and 42 are patentable at least through their dependency on claims 1 and 33.

- C. Claims 11-12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of Pirhonen in further view of Nanao.

Claims 11-12 depend from claim 1 and inherit every limitation therefrom. As shown above, the combination of Spaling and Chauncey does not teach or suggest every limitation of claim 1. Moreover, neither Pirhonen nor Nanao are relied upon to teach or suggest the missing limitations, nor do they do so. As such, these claims set forth limitations not taught or suggested by the Examiner’s proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- D. Claim 2 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of Van Lieshout.

Claim 2 depends from claim 1 and inherits every limitation therefrom. As shown above, the combination of Spaling and Chauncey does not teach or suggest every limitation of claim 1. Moreover, Van Lieshout is not relied upon to teach or suggest the missing limitations, nor does it do so. As such, these claims set forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- E. Claim 38 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of Pirhonen in further view of Van Lieshout.

Claim 2 depends from claim 1 and inherits every limitation therefrom. As shown above, the combination of Spaling and Chauncey does not teach or suggest every limitation of claim 33. Moreover, Van Lieshout is not relied upon to teach or suggest the missing limitations, nor does it do so. As such, these claims set forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- F. Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of U.S. Patent Publication Eyuboglu.

Claim 3 depends from claim 1 and inherits every limitation therefrom. As shown above, the combination of Spaling and Chauncey does not teach or suggest every limitation of claim 1. Moreover, Eyuboglu is not relied upon to teach or suggest the missing limitations, nor does it do so. As such, these claims set forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- G. Claim 39 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of Pirhonen in further view of Eyuboglu.

Claim 39 depends from claim 33 and inherits every limitation therefrom. As shown above, the combination of Spaling and Chauncey does not teach or suggest every limitation of claim 33. Moreover, Pirhonen and Eyuboglu are not relied upon to teach or suggest the missing limitations, nor do they do so. As such, these claims set forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- H. Claims 4 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of U.S. Patent Publication 2002/0174441 A1 to Marin.

Claim 4 depends from claim 1 and inherits every limitation therefrom. As shown above, the combination of Spaling and Chauncey does not teach or suggest every limitation of claim 1. Moreover, Marin is not relied upon to teach or suggest the missing limitations, nor does it do so. As such, these claims set forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- I. Claims 40 and 47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of Pirhonen in further view of Marin.

Claims 40 and 47 depend from claim 1 and inherit every limitation therefrom. As shown above, the combination of Spaling and Chauncey does not teach or suggest every limitation of claim 1. Moreover, Pirhonen and Marin are not relied upon to teach or suggest the missing limitations, nor do they do so. As such, these claims set forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- J. Claims 28-32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey.

Claims 28-32 depend from claim 1 and inherit every limitation therefrom. As shown above, the combination of Spaling and Chauncey does not teach or suggest every limitation of claim 1. As such, these claims set forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- K. Claims 7, 8, 13, 62, and 63 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of Pirhonen in further view of U.S. Patent 6,275,990 B1 to Dapper.

Claims 7, 8, 13, 62, and 63 depend from claim 1 and inherit every limitation therefrom. As shown above, the combination of Spaling and Chauncey does not teach or suggest every limitation of claim 1. Moreover, Pirhonen and Dapper are not relied upon to teach or suggest the missing limitations, nor do they do so. As such, these claims set forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- L. Claims 15-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of Cam.

Claims 15-20 depend from claim 1 and inherit every limitation therefrom. As shown above, the combination of Spaling and Chauncey does not teach or suggest every limitation of claim 1. Moreover, Cam is not relied upon to teach or suggest the missing limitations, nor does it do so. As such, these claims set forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- M. Claim 21 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling Chauncey in further view of Cam and further in view of Barsheshet.

Claim 21 depends from claim 1 and inherits every limitation therefrom. As shown above, the combination of Spaling and Chauncey does not teach or suggest every limitation of claim 1. Moreover, Barsheshet is not relied upon to teach or suggest the missing limitations, nor does it do so. As such, these claims set forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- O. Claims 23-27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of Schilling.

Claims 23-27 depend from claim 1 and inherit every limitation therefrom. As shown above, the combination of Spaling and Chauncey does not teach or suggest every limitation of claim 1. Moreover, Schilling is not relied upon to teach or suggest the missing limitations, nor does it do so. As such, these claims set forth limitations not taught or suggested by the

Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- P. Claims 43-45 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of Pirhonen in further view of Schilling.

Claims 43-45 depend from claim 33 and inherit every limitation therefrom. As shown above, the combination of Spaling and Chauncey does not teach or suggest every limitation of claim 33. Moreover, Pirhonen and Schilling are not relied upon to teach or suggest the missing limitations, nor do they do so. As such, these claims set forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- Q. Claim 41 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of Pirhonen in further view of Barsheshet.

Claim 41 depends from claim 33 and inherits every limitation therefrom. As shown above, the combination of Spaling and Chauncey does not teach or suggest every limitation of claim 33. Moreover, Pirhonen and Barsheshet are not relied upon to teach or suggest the missing limitations, nor do they do so. As such, these claims set forth limitations not taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

- R. Claim 46 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Spaling in view of Chauncey in further view of Pirhonen in further view of Schilling and further in view of Barsheshet.

Claim 46 depends from claim 33 and inherits every limitation therefrom. As shown above, the combination of Spaling and Chauncey does not teach or suggest every limitation of claim 33. Moreover, neither of Pirhonen, Barsheshet or Schilling is relied upon to teach or suggest the missing limitations, nor do they do so. As such, these claims set forth limitations not

taught or suggested by the Examiner's proposed combination. Therefore, Applicant requests withdrawal of the rejection of record.

Lack of Motivation

In the Current Action the Examiner opines that it would have been obvious "to combine using a first and second subsystem disposed at a subscriber location with the first subsystem being an indoor unit and the second subsystem being an outdoor unit, as suggested by Chauncey, with the system and method of Spaling." *See* Current Action, pg. 5. However, "if the proposed modification would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." *In re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (CCPA 1959). In the case at hand, Spaling discloses that its "base stations are coupled to their corresponding radio network controller by a digital link established via telephone lines, optical fiber links, microwave links, etc." *See* Spaling at paragraph [0039]. According to the Examiner's rationale Spaling would be modified so that its RNC is an indoor unit and its base station is an outdoor unit. As an initial matter, it would be impractical to place Chauncey's RNC indoors, as doing so would likely require construction of a warehouse of some sort. In any event, in all likelihood, at least a portion of Spaling's RNC would necessarily be placed outdoors to effectuate communication with a base station. Moreover, if we assume the user does not build a warehouse to surround the RNC, then the Examiner's proposed combination would require that Spaling's RNC undergo a substantial physical re-tooling to be placed indoors. This, of course, weighs against a determination of obviousness. *See In re Ratti*, 270 F.2d at 813 (reversing an obviousness rejection where the suggested combination would require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the primary reference was designed to operate). For the reasons set forth above, Applicant submits there is no motivation to combine Spaling and Chauncey as the Examiner proposes.

As discussed above, the Examiner proposes modifying Spaling, in view of Chauncey, to satisfy a first and second subsystem disposed at the same subscriber location. However, in determining obviousness, "a prior art reference must be considered as a whole, including portions that would teach away from the claimed invention." *See W.L. Gore & Associates, Inc.*

v. Garlock, Inc., 721 F.2d 1540 (Fed. Cir. 1983). In the case at hand, Spaling discloses that its base stations are coupled to a corresponding RNC by a digital link. See Spaling, paragraph [0039]. In contrast, Chauncey teaches that its outdoor unit (which the Examiner equates to a second subsystem) communicates with the indoor unit (which the Examiner equates to a first subsystem) via a coax cable carrying a modulated RF signal. See Chauncey at paragraph [0106], Fig. 1. As such, Chauncey teaches away from the Examiner's proposed combination in so much as it incorporates RF communication, as opposed to digital, between what the Examiner equates to a first subscriber subsystem and second subscriber subsystem. Further, the undesirability of incorporating a coax cable is mentioned in the present application, at for example, paragraphs [0022], [0023], and [0032]. In view of the above, there is no motivation to combine Spaling and Chauncey as the Examiner proposes. Therefore, Applicant requests withdrawal of the 35 U.S.C. 103 of claims 1-4, 6-34, 36-47 and 62-63.

IV. Conclusion

In view of the above, Applicant believes the pending application is in condition for allowance. Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2380, under Order No. 68144/P007US/10501224 from which the undersigned is authorized to draw.

Dated: May 23, 2007

Respectfully submitted,

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I hereby certify that this correspondence is being electronically filed with MS-Amendments, Commissioner for Patents, through EFS web filing.
Date of Electronic Filing: May 23, 2007

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